United States, or of any of the States.[10] As the first eight amendments to the federal Constitution are limitations upon the powers of Congress alone, the State governments are restrained from invasions of personal liberty only by the Fourteenth Amendment, and by such provisions as appear in their own State constitutions. The power to enforce this stringent form of military government is said by American courts upholding it, to rest in necessity and the right of the State to self preservation.[11]

In the recent case of *Ex parte McDonald* (Mont. 1914) 143 Pac. 947, growing out of the strike disorders at Butte, the Supreme Court of Montana has taken an intermediate position. The petitioner was first detained by the military authorities to prevent his supporting the rioters, and was then tried by court-martial and sentenced to a term of imprisonment. On an application for a writ of habeas corpus, the court held that a declaration of martial law by the governor gave the military authorities all powers necessary to suppress the insurrection, including that of arresting and detaining suspects to be handed over to the civil authorities for trial, but no power to try or punish civilians for insurrection or other crimes. The trial of the petitioner by court-martial was, therefore, declared void, but he was remanded to the custody of the militia to be handed over to the civil authorities. The view that the militia may detain suspects is upheld by the decisions of the Supreme Court of the United States, and of Colorado, in the famous cases growing out of the holding of Moyer by the State militia during the disorders at Cripple Creek,[12] but is open to criticism as permitting imprisonment of suspects for an indefinite time at the discretion of the military authorities, while preventing the latter from making examples of those who defy their authority and the laws of the State by such summary trial and punishment as would be most effective, if not essential, at such a time of public danger and lawless defiance of every legal authority.

If it clearly appears that the civil authorities are unable to cope with the situation, that the courts are defied by armed insurgents, or are unable to mete out justice through sympathy with one or another of the warring factions, and that the trial and punishment of offenders by court-martial is necessary to the re-establishment of peace, then the military authorities should be left in complete control and allowed every means to crush anarchy by effective martial law. But the rigors of such a regime should be applied only as a desperate last resource in the very greatest emergencies, and a resort for light and transient causes to martial law, involving, as it does, a suspension of constitutional guarantees, cannot be too heartily condemned.

MUNICIPAL TAXATION FOR PUBLIC PURPOSES.—During the nineteenth century, the scope of municipal enterprise in England was greatly

[10]See 24 Yale Law Journ. 189, 193. The constitutions of Massachusetts, New Hampshire, Rhode Island, and South Carolina, recognize the possibility of martial law, but do not define it as extending to a suspension of constitutional guarantees, and most State constitutions expressly provide for the supremacy of the civil over the military power.

[11]Nance and Mays *v.* Brown, *supra,* pp. 521, 522.

[12]Moyer *v.* Peabody (1909) 212 U. S. 78; *In re* Moyer (1905) 35 Col. 159.

enlarged, particularly after the passage of the Municipal Corporations Act, until, under the guise of "municipal trading", great inroads were made on what had been considered formerly the exclusive realm of private undertaking. A similar tendency was manifest in this country, although it never attained such formidable proportions, because written constitutions impose upon our legislatures limitations and restrictions by which the English Parliament is unfettered.[1] The power of a municipality to conduct its affairs depends primarily upon the ability to tax, conferred upon it by the legislature.[2] But to be constitutional, taxation in America must be levied for a purpose which is public.[3] American courts have looked askance at the efforts to extend governmental activities, and the category of purposes recognized as public at the adoption of the particular constitution invoked, has, in the main, been extended comparatively little.[4]

As might be expected, judges have not always agreed either as to what constitutes a purpose by nature public,[5] or as to whether a given set of facts brings a particular case under the heading of one of those purposes.[6] Municipal purposes now considered public, include the maintenance of highways,[7] and a public educational system,[8] and the supplying of water and light to the municipality itself or the inhabitants thereof.[9] Other purposes for which attempts are occasionally made to levy municipal taxes are obviously private, and taxes for these have been uniformly declared unconstitutional.[10] Between the

[1]See 3 Dillon, Municipal Corporations (5th ed.) §§ 1291, 1292.

[2]4 Dillon, Municipal Corporations (5th ed.) §§ 1350, 1375-1377.

[3]1 Cooley, Taxation (3rd ed.) 84; Lowell *v.* City of Boston (1873) 111 Mass. 454.

[4]*Cf.* Opinions of the Justices (1892) 155 Mass. 598.

[5]In Opinion of the Justices (1890) 150 Mass. 592, furnishing electric light to citizens was held to be a public purpose, but in Mauldin *v.* City Council (1889) 33 S. C. 1, the opposite result was reached. In Baltimore *v.* Keeley Institute (1895) 81 Md. 106, an act providing for the medical treatment of pauper drunkards in a private institution, at public expense, was held valid; but in Wisconsin Keeley Institute *v.* Milwaukee County (1897) 95 Wis. 135, a similar statute was declared unconstitutional.

[6]In State *v.* Nelson County (1890) 1 N. Dak. 88, it was held that supplying seed grain to needy farmers was a public purpose, because intended for the "necessary support" of the poor; but in State *v.* Osawkee Township (1875) 14 Kan. 418, and in Wm. Deering & Co. *v.* Peterson (1898) 75 Minn. 118, supplying such grain was held to be no part of the poor relief.

[7]1 Cooley, Taxation (3rd ed.) 212-217. The constitutionality of the acts under which the New York subway was constructed, was upheld largely on the ground that such a railroad is a public highway for a "city purpose." See Sun Publishing Assn. *v.* Mayor (1897) 152 N. Y. 257, 267.

[8]1 Cooley, Taxation (3rd ed.) 198-204. But to be constitutional, a tax levied by a municipality for the support of schools must be intended to benefit only those schools which are public, and under the control of the municipal authorities. Jenkins *v.* Andover (1869) 103 Mass. 94; Curtis's Adm'r. *v.* Whipple (1869) 24 Wis. 350.

[9]1 Cooley, Taxation (3rd ed.) 217; Opinion of the Justices (1890) 150 Mass. 592; Hequembourg *v.* City of Dunkirk (N. Y. 1888) 49 Hun 550; State *v.* City of Toledo (1891) 48 Ohio St. 112.

[10]A municipality cannot tax its inhabitants to assist a private corporation, even if benefits would result to the town and the inhabitants. Loan Assn.

two extremes, is found a debatable ground where many of the judicial conflicts have occurred.[11] An excellent illustration of this judicial divergence is furnished by a comparison with several other decisions, of the recent case of *Laughlin* v. *City of Portland* (1914) 111 Me. 846, in which the right of a municipality to construct and operate a municipal fuel yard, was held constitutional.[12] It is impossible to formulate an exact definition of public purpose which will be invariably accurate, but it seems safe to assert that in determining whether the purpose for which a municipal tax is levied is public, the court will be influenced by the need of the particular community for the proposed innovation, by the availability of private capital,[13] by the ability of private enterprise to supply the public need in times of emergency, by the danger arising from unscrupulous private monopoly and manipulation of commodities which are necessities,[14] and, in addition, not to be overlooked, by the individual ideas of political economy entertained by the different judges.

Public opinion seems to favor the extension of municipal enterprise.[15] The principal case indicates that the courts are responding to public sentiment,[16] and there is likely to be a gradual but persistent increase in the number of municipal undertakings, taxation for which will be held constitutional as furthering purposes public and municipal, founded "upon the ground of plain necessity or manifest public utility."[17]

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v. Topeka (1874) 20 Wall. 655; Allen *v.* Inhabitants of Jay (1872) 60 Me. 124. A tax levied by a municipality for the execution of a governmental function expressly delegated to the federal government, is illegal. Stetson *v.* Kempton (1816) 13 Mass. 272.

[11]Much confusion exists, for instance, over the constitutionality of municipal taxes laid to provide bounties for soldiers. *Cf.* Freeland *v.* Hastings (Mass. 1865) 10 Allen 570; Brodhead *v.* City of Milwaukee (1865) 19 Wis. *624; Bush *v.* Supervisors (1899) 159 N. Y. 212.

[12]Massachusetts declared at first that fuel yards conducted by a municipality would be an unwarranted governmental invasion of the field of private enterprise, Opinions of the Justices (1892) 155 Mass. 598, but later admitted that, under stress of sudden emergency, a municipality might supply its citizens with fuel temporarily. Opinion of the Justices (1903) 182 Mass. 605. Michigan has adopted this qualified view of the Massachusetts court. Baker *v.* City of Grand Rapids (1906) 142 Mich. 687. The principal case, although acquiescing in the emergency theory of the Massachusetts court, holds squarely that the sale of fuel by a municipality to its inhabitants is a public purpose.

[13]See Sun Publishing Assn. *v.* Mayor (N. Y. 1896) 8 App. Div. 230.

[14]*Cf.* Opinion of the Justices (1903) 182 Mass. 605; Baker *v.* City of Grand Rapids, *supra.*

[15]See 2 Virginia Law Rev. 152. The public markets recently established in New York City have met with popular approval, and have accomplished a substantial saving in money to many of the inhabitants. The establishment of a municipal ice plant has been agitated several times in New York City.

[16]*Cf.* Holton *v.* City of Camilla (1910) 134 Ga. 560, in which the establishment of a municipal ice plant was declared constitutional. Note that the case was decided without reliance upon the emergency doctrine of the Massachusetts court.

[17]See 3 Dillon, Municipal Corporations (5th ed.) § 1291.